

**Sprewell v NYP Holdings, Inc.**

2004 NY Slip Op 30363(U)

June 10, 2004

Sup Ct, New York County

Docket Number: 12292312002

Judge: Marcy S. Friedman

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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: \_\_\_\_\_

PART \_\_\_\_\_

*Justina*

0122923/2002

SPREWELL, LATRELL F  
vs  
NYP HOLDINGS, INC.

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

SEQ 4

COMPEL DISCLOSURE

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for compel

PAPERS NUMBERED

1, 1a, 1b  
2, 2a  
3, 4  
5, 6, 7

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

*Notice of Cross-Motion*  
Answering Affidavits – Exhibits \_\_\_\_\_

Perjury Affidavits \_\_\_\_\_

*Memos of Law*

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE \_\_\_\_\_ FOR THE FOLLOWING REASON(S):

FILED

JUN 23 2004

CLERK OF THE COURT  
OFFICE

Dated: 6/10/04

*Mary B*  
\_\_\_\_\_  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY - - PART 57

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LATRELL F. SPREWELL,

*Plaintiff(s),*

*against*

NYP HOLDINGS, INC.,  
MARC BERMAN, et al.,

*Defendant(s),*

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Index No.: 12292312002

DECISION/ORDER

Present: HON. MARCY FRIEDMAN  
Justice, Supreme Court

In this defamation action, defendants move to compel non-party Madison Square Garden (“MSG”) to produce documents in response to a subpoena duces tecum served on MSG. The subpoena contained 15 document requests seeking, among other items, documents relating to disciplinary actions taken by MSG against plaintiff, medical records and other documents pertaining to plaintiff’s hand injury that is at issue in the action, and documents related to plaintiff’s settlement of a grievance against the Knicks. MSG and non-parties Steve Mills, Mike Saunders, Scott Layden, and Dr. Susan Craig-Scott (“non-parties”) cross-move for a protective order and to quash subpoenas seeking depositions of the non-parties.

In its opposition to defendants’ motion, MSG expressly states that it “reached an agreement with Defendants on the scope of the documents to be produced, resulting in MSG agreeing to produce more documents than reflected in its written objections.” (MSG Memo of Law at 1.) MSG further states that “the Non-Parties wish to make clear that they do not seek a protective order quashing the discovery of confidential materials. To the contrary, the Non-Parties seek only an order prohibiting the public dissemination of these materials **and** the use of

such information for reasons unrelated to this action.” (*Id.* at 7.) Thus, MSG seeks “an order providing that the confidential personnel decisions and deliberations about its then employee, the employee’s medical records and the confidential settlement agreement entered into with the employee be accorded confidential treatment during the pretrial proceedings in this case.” (*Id.* at 2.)

New York courts “ ‘have long recognized that civil actions and proceedings should be open to the public in order to ensure that they are conducted efficiently, honestly and fairly.’ ” (*Danco Labs., Ltd. v Chemical Works of Gedcon Richter, Ltd.*, 274 AD2d 1, 7 [1<sup>st</sup> Dept 2000], quoting *Matter of Conservatorship of Brownstone*, 191 AD2d 167, 168.) However, while the “presumption of public access is broad,” “it is not absolute.” (*Id.*) Thus, “material confidential in nature, or information which is subject to abuse if widely disseminated, shall be accorded judicial safeguards where possible” (*Snyder v Parke, Davis & Co.*, 56 AD2d 536, 536-537 [1<sup>st</sup> Dept 1977]; *McLaughlin v Searle, Inc.*, 38 AD2d 810, 811 [1<sup>st</sup> Dept 1972]), and may be subject to a confidentiality agreement. (See *Yatter v William Morris Agency, Inc.*, 273 AD2d 83 [1<sup>st</sup> Dept 2000]; *Butt v New Ynrk Med. Coll.*, 2004 NY App Div LEXIS 7231 [2d Dept 2004].) Courts have therefore required confidential treatment of information containing “trade or business secrets, secret processes or research or any other confidential material.” (*Snyder*, 56 AD2d at 537; *Tymko v K-Mai-t Discount Stores, Inc.*, 75 AD2d 987 [4<sup>th</sup> Dept 1980], *lv dismissed* 51 NY2d 708.)

Here, however, the conclusory assertions of MSG’s counsel that the documents are confidential and subject to abuse by defendants are insufficient to entitle MSG to a confidentiality order. (See *New York State Elec. and Gas Corp. v Lexington Ins. Co.*, 160 AD2d

241 [1<sup>st</sup> Dept 19901; New York State Businessmen's Group, Inc. v Dalton, 154 AD2d 801 [3d Dept 1989].) MSG makes no claim that the subpoenaed documents contain trade or business secrets or are protected by a privilege. Nor does MSG claim that the documents, including internal communications, concern its disciplinary policies or procedures in general, which would arguably be subject to confidentiality, as opposed to particular disciplinary determinations made with regard to plaintiff. As to documents related to plaintiff's medical treatment, it is undisputed that plaintiff has placed his medical condition in controversy and that defendants are entitled to discovery concerning his condition. (See Hoenig v Westphal, 52 NY2d 605 [1981].) MSG makes no showing that such disclosure should be subject to a confidentiality order.'

In so holding, the court recognizes that MSG is not a party to the litigation and that courts have held that discovery by non-parties may be accorded confidentiality where necessary to protect them from undue burdens. (See, e. g., Republic of Philippines v Westinghouse Elec. Corp., 949 F2d 653 [3d Cir 1991].) In this case, however, there is no showing by MSG that discovery will cause any burden or hardship or, indeed, that there are any sensitive materials requiring protection.

As to the settlement agreement in question, MSG argues that it should be treated as confidential because it contains a confidentiality provision. Although the pertinent language of the agreement is not provided by any party, the existence of such a provision is not disputed. Nor

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'The confidentiality order proposed by MSC includes a provision for sealing of the documents. Pursuant to New York Rules of Court § 216.1 (22 NYCRR 216.1), a court shall not enter a sealing order except upon a showing of good cause. The conclusory claims of counsel for MSG that the subpoenaed documents are confidential are also insufficient to show good cause for a sealing order. (See Matter of the Estate of Hoffman, 284 AD2d 92 [1<sup>st</sup> Dept 2001]; Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd., 274 AD2d 1, supra.)

do defendants make any showing that any basis exists for setting aside the provision. (See Speken v Columbia Presbyterian Med. Ctr., 304 AD2d 489 [1<sup>st</sup> Dept 2003].) MSG's production of the settlement agreement therefore shall be subject to the confidentiality provision in the agreement.

**MSG** and the other non-parties also cross-move to quash subpoenas ad testificandum served on non-party witnesses Mike Saunders, the Knicks' team trainer; Scott Layden, former General Manager of the Knicks; and Dr. Susan Craig-Scott, who performed hand surgery on plaintiff.<sup>2</sup> As a threshold matter, the non-parties contend that the subpoenas should be quashed because they fail to comply with CPLR 3101(a)(4).

CPLR 3101(a)(4) provides that discovery of "matter material and necessary in the prosecution or defense of an action" may be obtained from a non-party "upon notice stating the circumstances or reasons such disclosure is sought or required."

Although defendants claim that counsel for the non-parties was informed of the reasons they sought to depose the non-parties, the subpoenas are facially defective as they fail to state "the circumstances or reasons such disclosure is sought." (Da Stefano v MT Health Clubs, Inc., 220 AD2d 331 [1<sup>st</sup> Dept 1995].) Defendants now assert that they are entitled to depositions of each of these witnesses because they "may have vastly differing accounts of a main issue in this case: namely, knowledge about what Plaintiff, and any individuals associated with Plaintiff, may have said about how the Hand Injury occurred." (Ds' Reply Memo at 10.)<sup>3</sup>

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<sup>2</sup>A subpoena was also served on Steve Mills, President of MSG Sports. MSG has agreed to produce him. (MSG Memo of Law at 16.)

<sup>3</sup>Although not the subject of the instant cross-motion, MSG notes in its reply, and defendants do not deny, that defendants have served or intend to serve at least three additional non-party subpoenas on

\* 6]

The court declines to enforce the subpoenas ad testificandum due to the facial deficiency of the subpoenas, especially where, as here, there is significant document discovery outstanding which may provide the information sought by defendants from these non-parties' depositions. (Cf. Da Stefano v MT Health Clubs, Inc., 220 AD2d 331, *supra*.) The quashing of the subpoenas is without prejudice, however, to defendants' right to seek to depose non-parties upon a proper showing of need for such depositions after medical records and other document discovery has been completed.

Accordingly, defendants' motion and the cross-motion of MSG and the non-parties are granted to the extent that it is

ORDERED that MSG shall produce, within 20 days of service of a copy of this order with notice of entry, documents responsive to defendants' subpoena dated January 8, 2004, in accordance with the terms of this decision and order; and it is further

ORDERED that the subpoenas served on non-parties Mike Saunders, Scott Layden, and Dr. Susan Craig-Scott are quashed; and it is further

ORDERED that the compliance conference scheduled in Part 57 on June 24, 2004 is adjourned to July 22, 2004 at 2:30 p.m.

This constitutes the decision and order of the court.

Dated: New York, New York  
June 10, 2004

  
\_\_\_\_\_  
MARCY FRIEDMAN, J.S.C.

FILED  
JUN 23 2004  
CLERK  
OFFICE

\_\_\_\_\_  
Dr. Norman Scott, Dr. Michael Cushner, and Susan Kessner.